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8 Attorneys for Plaintiff MARCOS GALVAN  
on behalf of himself and others similarly situated

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF SAN DIEGO**

12 MARCOS GALVAN, an individual on  
behalf of himself and all others similarly  
13 situated,

14 Plaintiff,

15 vs.

16 DS SERVICES OF AMERICA, INC., dba  
PRIMO WATER NORTH AMERICA, a  
Delaware Corporation; DS SERVICES OF  
17 AMERICA, a business entity of unknown  
form; and DOES 1 through 50, inclusive,  
18

19 Defendants.

Case No.: 24CU028514N

CLASS ACTION

Assigned for All Purposes To:  
Hon. Michael D. Washington  
Dept.: N-31

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226(a);
6. Violation of Labor Code § 203;
7. Violation of Labor Code § 204;
8. Failure to Keep Required Payroll Records under Labor Code §§ 1174 and 1174.5;
9. Failure to Reimburse Necessary Business Expenses § 2802;
10. Violation of Business & Professions Code § 17200 *et seq.*; and
11. Penalties under PAGA, Labor Code § 2698

**DEMAND FOR JURY TRIAL**

1 **INTRODUCTION**

2 1. Plaintiff MARCOS GALVAN (“Plaintiff”) brings this action on behalf of himself  
3 and the Class Members who are defined as “all current and former employees within the State of  
4 California who, at any time from four (4) years prior to the filing of this lawsuit, are or were  
5 employed as non-exempt hourly employees by Defendant DS SERVICES OF AMERICA, INC.,  
6 dba PRIMO WATER NORTH AMERICA, (“Defendant DS Services of America, Inc.”); and/or  
7 Defendant DS SERVICES OF AMERICA, (“Defendant DS Services of America”); and/or DOES  
8 1 through 50, inclusive” (all Defendants being collectively referred to herein as “Defendants”).

9 2. Plaintiff alleges that Defendants, and each of them, violated various provisions of  
10 the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and the  
11 California Business & Professions Code, and seeks redress for these violations.

12 3. Upon information and belief, Plaintiff was employed by Defendants and (1) shared  
13 similar job duties and responsibilities; (2) was subjected to the same policies and practices; and (3)  
14 endured similar violations at the hands of Defendants as the other Class Members who served in  
15 similar and related positions.

16 **THE PARTIES**

17 **A. The Plaintiff**

18 4. Plaintiff MARCOS GALVAN resides in California, during the time period relevant  
19 to this Complaint, and was employed by Defendants as a non-exempt hourly employee within the  
20 State of California.

21 **B. The Defendants**

22 5. Defendant DS Services of America, Inc., is a Delaware Corporation with its  
23 principal place of business in Tampa, Florida and is registered with the California Secretary of  
24 State. Defendant DS Services of America, Inc., has been the employer listed on the wage  
25 statements and employment records issued to Plaintiff during the relevant time period that Plaintiff  
26 was employed with Defendants. Defendant DS Services of America, Inc., employs Plaintiff and  
27 the Class Members in California, including at Defendants’ offices and facilities in San Diego,  
28 California, and throughout California, and conducts business throughout California.

1           6. Defendant DS Services of America is a business entity of unknown form.  
2 Defendant DS Services of America has been the employer listed on the wage statements and  
3 employment records issued to Plaintiff during the relevant time period that Plaintiff was employed  
4 with Defendants. Defendant DS Services of America employs Plaintiff and the Class Members in  
5 California, including at Defendants' offices and facilities in San Diego, California, and throughout  
6 California, and conducts business throughout California.

7           7. The true names and capacities, whether individual, corporate, associate, or  
8 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently  
9 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of  
10 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants  
11 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in  
12 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend  
13 this Complaint to reflect the true names and capacities of the Defendants designated herein as  
14 Does 1 through 50 when their identities become known.

15           8. Plaintiff is informed and believes and thereon alleges that each Defendant acted in  
16 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried  
17 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of  
18 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in  
19 all respects as the employers or joint employers of Class Members. Defendants, and each of them,  
20 exercised control over the wages, hours or working conditions of Class Members, or suffered or  
21 permitted Class Members to work, or engaged, thereby creating a common law employment  
22 relationship, with Class Members. Therefore, Defendants, and each of them, employed or jointly  
23 employed Class Members.

24           9. Whenever and wherever reference is made in this Complaint to any act by a  
25 Defendant or Defendants, such allegations and references shall also be deemed to mean the acts  
26 and failures to act of each Defendant acting individually, jointly, and severally.

27           10. Whenever and wherever reference is made to individuals who are not named as a  
28 Defendant in this Complaint but were agents, servants, employees and/or supervisors of

1 Defendants, such individuals at all relevant times acted on behalf of Defendants within the scope  
2 of their employment.

3 **JURISDICTION AND VENUE**

4 11. This Court has jurisdiction over this Action pursuant to California Code of Civil  
5 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as  
6 a Class Action on behalf of similarly situated Class Members of Defendants pursuant to California  
7 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district pursuant  
8 to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and  
9 liabilities giving rise to this lawsuit occurred in part in San Diego County. Defendants maintain and  
10 operate facilities in San Diego County and employs Plaintiff and other Class Members in San Diego,  
11 while doing business throughout California.

12 **FACTUAL BACKGROUND**

13 12. Class Members consistently worked at Defendants behest without being paid all  
14 wages due. Class Members were either not paid by Defendants for all hours worked or were not  
15 paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants  
16 failed to pay Class Members all wages due and owing, including by requiring off the clock work,  
17 failing to provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely  
18 pay wages including final wages, failing to maintain accurate records, and failing to reimburse  
19 necessary business expenses all in violation of various provisions of the California Labor Code and  
20 applicable Wage Orders.

21 13. During the course of Class Members' employment with Defendants, Class Members  
22 were not paid all wages they were owed. Class Members were required to perform pre-shift and  
23 post-shift off the clock work which they were not compensated for despite being subject to  
24 Defendants' control. Specifically, Plaintiff was required to continue working after clocking out for  
25 his shift and was not compensated for this time. Upon information and belief, Class Members were  
26 also required to perform similar off the clock work. Furthermore, Class Members were required to  
27 wait in line for a time clock to become available. Moreover, Class Members were required to work  
28 through portions of their meal periods while they were off the clock and were not paid for this time.

1 Defendants also contacted Class Members on their personal cell phones with work demands outside  
2 of scheduled work hours, and Class Members were not paid for this time.

3 14. By implementing policies, programs, practices, procedures and protocols which  
4 resulted in off the clock work, Defendants' willful actions resulted in the systematic underpayment  
5 of wages to Class Members, including underpayment of overtime pay to Class Members over the  
6 relevant time period. For example, the above described off the clock work caused Plaintiff and Class  
7 Members to begin receiving overtime pay later than they should have.

8 15. As a result of the above-described requirements to work off the clock, and the other  
9 wage violations they endured at Defendants' hands, Class Members were not properly paid all wages  
10 earned and all wages owed to them by Defendants, including when working more than eight (8)  
11 hours in any given day and/or more than forty (40) hours in any given week.

12 16. As a result of Defendants' unlawful policies and practices, Class Members incurred  
13 overtime hours worked for which they were not adequately and completely compensated, in addition  
14 to the hours they were required to work off the clock. To the extent applicable, Defendants also  
15 failed to pay Class Members at an overtime rate of 1.5 times the regular rate for the first eight hours  
16 of the seventh consecutive work day in a week and overtime payments at the rate of 2 times the  
17 regular rate for hours worked over eight (8) on the seventh consecutive work day, as required under  
18 the Labor Code and applicable IWC Wage Orders.

19 17. Therefore, from at least four (4) years prior to the filing of this lawsuit and continuing  
20 to the present, Defendants had a consistent policy or practice of failing to pay Class Members for  
21 all hours worked, and failing to pay minimum wages for all time worked, as required by California  
22 law. Defendants thus failed to pay Class Members at least minimum wages for all the time they  
23 worked for Defendants in violation of the Labor Code and applicable IWC Wage Orders as the  
24 actual times when Class Members were under the control and direction of Defendants was under  
25 reported in the hours reflected on the timekeeping records. Furthermore, Defendants' willful actions  
26 resulted in the systematic underpayment of wages to Class Members, including underpayment of  
27 overtime pay to Class Members over a period of time.

28 18. Therefore, from at least four (4) years prior to the filing of this lawsuit and continuing

1 to the present, Defendants had a consistent policy or practice of failing to pay Class Members for  
2 all hours worked. Also, from at least four (4) years prior to the filing of this lawsuit and continuing  
3 to the present, Defendants also had a consistent policy or practice of failing to pay Class Members  
4 their true and correct overtime compensation at premium overtime rates for all hours worked in  
5 excess of eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours  
6 worked in excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding  
7 sections of IWC Wage Orders.

8 19. Additionally, Defendants failed to provide all the legally required unpaid, off-duty  
9 meal periods and all the legally required paid, off-duty rest periods to Class Members, as required  
10 by the applicable Wage Order and Labor Code. Class Members were required to perform work as  
11 ordered by Defendants for more than five (5) hours during a shift but were often required to do so  
12 without receiving a lawful and timely meal break. In addition to untimely meal periods, Defendants  
13 also required Class Members to respond to work demands. Defendants placed their needs over Class  
14 Members lawful meal and rest breaks, and this resulted in Class Members often having to work  
15 through their scheduled meal and/or rest breaks, or otherwise taking shortened ones, because the  
16 demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off  
17 duty meal and/or rest break.

18 20. On the occasions when Class Members worked over 10 hours in a shift, Defendants  
19 also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a  
20 result, Defendants' failure to provide Class Members with all legally required off-duty, unpaid meal  
21 periods and all the legally required off-duty, paid rest periods is and will be evidenced by  
22 Defendants' business records, or lack thereof. Defendants also failed to pay Class Members  
23 "premium pay," i.e. one hour of wages at each Class Member's effective hourly rate of pay, for each  
24 meal period or rest break that Defendants failed to provide or deficiently provided.

25 21. Therefore, for at least four (4) years prior to the filing of this action and continuing  
26 to the present, Defendants have regularly required Class Members to work shifts in excess of five  
27 (5) hours without providing them with uninterrupted meal periods of not less than thirty (30)  
28 minutes, and shifts in excess of (10) hours without providing them with second meal periods of not

1 less than thirty minutes; nor did Defendants pay Class Members “premium pay,” i.e. one hour of  
2 wages at each Class Member’s effective hourly rate of pay, for each meal period that Defendants  
3 failed to provide or deficiently provided.

4 22. Meal period violations thus occurred in one or more of the following manners:

- 5 (a) Class Members were not provided full thirty-minute duty free meal periods  
6 for work days in excess of five (5) hours and were not compensated one (1)  
7 hour’s wages in lieu thereof, all in violation of, among others, Labor Code  
8 §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage  
9 Order(s);
- 10 (b) Class Members were not provided second full thirty-minute duty free meal  
11 periods for work days in excess of ten (10) hours;
- 12 (c) Class Members were required to work through at least part of their daily  
13 meal period(s);
- 14 (d) Meal periods were provided after five (5) hours of continuous work during  
15 a shift; and
- 16 (e) Class Members were restricted in their ability to take a full thirty-minute  
17 meal period.

18 23. Class Members were also not authorized and permitted to take lawful rest periods,  
19 were systematically required by Defendants to work through or during breaks and were not provided  
20 with one (1) hour’s wages in lieu thereof. Class Members were restricted in their ability to take their  
21 full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods.  
22 Therefore, from at least four years prior to the filing of this lawsuit and continuing to the present,  
23 Defendants have consistently failed to provide Class Members with paid rest breaks of not less than  
24 ten minutes for every work period of four or more consecutive hours; or major fraction thereof, nor  
25 did Defendant pay Class Members premium pay for each day on which requisite rest breaks were  
26 not provided or were deficiently provided.

27 24. Rest period violations therefore arose in one or more of the following manners:

- 28 (a) Class Members were required to work without being provided a minimum

1 ten (10) minute rest period for every four (4) hours or major fraction  
2 thereof worked and were not compensated one (1) hour of pay at their  
3 regular rate of compensation for each workday that a rest period was not  
4 provided;

5 (b) Class Members were not authorized and permitted to take timely rest  
6 periods for every four hours worked, or major fraction thereof; and

7 (c) Class Members had their rest periods interrupted by work demands.

8 25. Defendants also consistently failed to issue accurate itemized wage statements as  
9 required by Labor Code § 226(a). Specifically, the wage statements given to Class Members failed  
10 to correctly include the name and address of the legal entity that is the employer. Thus, the wage  
11 statements do not comply with Labor Code § 226(a)(8). Further, the wage statements given to Class  
12 Members failed to accurately account for unpaid wages and overtime because Defendants under-  
13 reported Class Members' actual hours worked due to the off the clock work. Additionally, the wage  
14 statements given to Class Members failed to accurately account for premium pay for deficiently  
15 provided meal periods and rest breaks.

16 26. From at least four (4) years prior to filing this lawsuit and continuing to the present,  
17 Defendants have thus also had a consistent policy of failing to pay all wages owed to Class Members  
18 at the time of their termination or within seventy-two (72) hours of their resignation, as required by  
19 California wage-and-hour laws. Specifically, Class Members were not paid all regular and overtime  
20 wages because Defendants failed to pay for all hours worked by requiring off the clock work.  
21 Additionally, Defendants failed to pay premium wages owed for unprovided meal periods and rest  
22 periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the  
23 required time was willful within the meaning of Labor Code § 203.

24 27. Additionally, from at least four (4) years prior to the filing of this lawsuit and  
25 continuing to the present, Defendants have regularly required Plaintiff to incur business expenses in  
26 the course of performing his required job duties for Defendants, including for cell phone expenses.  
27 Upon information and belief, Class Members incurred similar costs. These expenses incurred by  
28 Plaintiff and Class Members were necessary and required of them in performing their assigned job

1 duties, but Defendants failed to reimburse Plaintiff and Class Members for all such necessary  
2 expenditures, thus entitling them to reimbursement according to proof as required under Labor Code  
3 § 2802 and the applicable provisions of the IWC Wage Orders.

4 28. In light of the foregoing, Plaintiff and Class Members bring this action pursuant to,  
5 *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 551, 552,  
6 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698 *et seq.*, 2802, 2926  
7 and California Code of Regulations, Title 8, section 11000 *et seq.*

8 29. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff  
9 and the Class Members seek injunctive relief, restitution, and disgorgement of all benefits  
10 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or  
11 fraudulent practices alleged in this Complaint.

#### 12 CLASS ALLEGATIONS

13 30. Plaintiff seeks to represent the Subclasses composed of and defined as follows:

14 a. Subclass 1. Minimum Wages Subclass. All Class Members who were not  
15 compensated for all hours worked for Defendants at the applicable minimum wage.

16 b. Subclass 2. Wages and Overtime Subclass. All Class Members who were not  
17 compensated for all hours worked for Defendants at the required rates of pay, including for all hours  
18 worked in excess of eight in a day and/or forty in a week.

19 c. Subclass 3. Meal Period Subclass. All Class Members who were subject to  
20 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-  
21 free meal periods or one hour of pay at the Class Member's regular rate of pay in lieu thereof.

22 d. Subclass 4. Rest Break Subclass. All Class Members who were subject to  
23 Defendants' policy and/or practice of failing to authorize and permit Class Members to take  
24 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction  
25 thereof, and failing to pay one hour of pay at the Class Member's regular rate of pay in lieu thereof.

26 e. Subclass 5. Wage Statement Subclass. All Class Members who, within the  
27 applicable limitations period, were not provided with accurate itemized wage statements.

28 f. Subclass 6. Termination Pay Subclass. All Class Members who, within the

1 applicable limitations period, either voluntarily or involuntarily separated from their employment  
2 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon  
3 termination.

4 g. Subclass 7: Failure to Timely Pay Wages Twice Monthly Subclass. All Class  
5 Members who were subject to Defendants' policy and practice of not timely paying all wages earned  
6 when they were due and payable at least twice monthly.

7 h. Subclass 8. Payroll Records Subclass. All Class Members who were subject to  
8 Defendants' policy and/or practice of failing to keep accurate time and wage records as required by  
9 California wage-and-hour laws.

10 i. Subclass 9. Expense Reimbursement Subclass. All Class Members who incurred  
11 necessary and reasonable expenses in connection with performing their job duties for Defendant and  
12 who were subject to a policy and/or practice under which such expenses were not reimbursed.

13 j. Subclass 10. UCL Subclass. All Class Members who are owed restitution as a result  
14 of Defendants' business acts and practices, to the extent such acts and practices are found to be  
15 unlawful, deceptive, and/or unfair.

16 31. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify  
17 the class description with greater particularity or further division into subclasses or limitation to  
18 particular issues. To the extent equitable tolling operates to toll claims by the Class against  
19 Defendants, the Class Period should be adjusted accordingly.

20 32. Defendants, as a matter of company policy, practice and procedure, and in violation  
21 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,  
22 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in  
23 a practice whereby Defendants failed to correctly calculate compensation for the time worked by  
24 Class Members, even though Defendants enjoyed the benefit of this work, required Class Members  
25 to perform this work and permitted or suffered to permit this work. Defendants have uniformly  
26 denied these Class Members wages to which these employees are entitled and failed to provide meal  
27 periods or authorize and permit rest periods, in order to unfairly cheat the competition and  
28 unlawfully profit.

1           33.     This action has been brought and may properly be maintained as a class action under  
2 the provisions of Code of Civil Procedure § 382 because there is a well-defined community of  
3 interest in litigation and proposed class is easily ascertainable.

4           **A.     Numerosity**

5           34.     The potential members of the class as defined are so numerous that joinder of all the  
6 members of the class is impracticable. While the precise number of class members has not been  
7 determined at this time, Plaintiff is informed and believes that Defendants employ, or during the  
8 time period relevant to this lawsuit, employed hundreds of employees who satisfy the Class  
9 definition within the State of California.

10          35.     Accounting for employee turnover during the relevant time period increases this  
11 number substantially. Plaintiff alleges that Defendants' employment records will provide  
12 information as to the number and location of all Class Members.

13          **B.     Commonality**

14          36.     There are questions of law and fact common to the Class that predominates over any  
15 questions affecting only individual Class Members. These common questions of law and fact  
16 include:

- 17           a.     Whether Defendants failed to pay Class Members minimum wages;
- 18           b.     Whether Defendants failed to pay Class Members wages for all hours worked;
- 19           c.     Whether Defendants failed to pay Class Members overtime as required under Labor  
20               Code § 510;
- 21           d.     Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable  
22               IWC Wage Orders, by failing to provide Class Members with requisite meal  
23               periods or premium pay in lieu thereof;
- 24           e.     Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage  
25               Orders, by failing to authorize and permit Class Members to take requisite rest  
26               breaks or provide premium pay in lieu thereof;
- 27           f.     Whether Defendants violated Labor Code § 226(a) by providing Class Members  
28               with inaccurate wage statements;

- g. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- h. Whether Defendants' conduct was willful;
- i. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by failing to maintain accurate records of Class Members' earned wages and work periods;
- j. Whether Defendants violated Labor Code § 1194 by failing to compensate all Class Members during the relevant time period for all hours worked, whether regular or overtime;
- k. Whether Defendants violated Labor Code § 204 by failing to timely pay wages;
- l. Whether Defendants violated Labor Code § 2802 by failing to reimburse all necessary business expenses Defendants required them to incur in performing their job duties;
- m. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- n. Whether Class Members are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

**C. Typicality**

37. The claims of the named Plaintiff is typical of those of Class Members. The Class Members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of statutes, as well as regulations that have the force and effect of law, as alleged herein.

**D. Adequacy of Representation**

38. Plaintiff will fairly and adequately represent and protect the interest of the Class Members. Counsel who represents Class Members are experienced and competent in litigating employment class actions.

**E. Superiority of Class Action**

39. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and

1 questions of law and fact common to all Class Members predominate over any questions affecting  
2 only individual Class Members. Each Class Member has been damaged and is entitled to recovery  
3 by reason of Defendants' illegal policies or practices of failing to compensate Class Members  
4 properly.

5         40. As to the issues raised in this case, a class action is superior to all other methods for  
6 the fair and efficient adjudication of this controversy, as joinder of all Class Members is  
7 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class  
8 Members. Further, as the economic or other loss suffered by vast numbers of Class Members may  
9 be relatively small, the expense and burden of individual actions makes it difficult for the Class  
10 Members to individually redress the wrongs they have suffered. Moreover, in the event  
11 disgorgement is ordered, a class action is the only mechanism that will permit the employment of  
12 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in  
13 managing this case as a class action, and proceeding on a class-wide basis will permit Class  
14 Members to vindicate their rights for violations they endured which they would otherwise be  
15 foreclosed from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to  
16 them.

17         41. Class action treatment will allow those persons similarly situated to litigate their  
18 claims in the manner that is most efficient and economical for the parties and the judicial system.  
19 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.  
20 Plaintiff contemplates the eventual issuance of notice to the proposed Class Members that would  
21 set forth the subject and nature of the instant action. The Defendants' own business records can be  
22 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent  
23 that any further notice is required, additional media and/or mailings can be used.

24         42. Defendants, as prospective and actual employers of the Class Members, had a  
25 special fiduciary duty to disclose to prospective Class Members the true facts surrounding  
26 Defendants' pay practices, policies and working conditions imposed upon Class Members as well  
27 as the effect of any alleged arbitration agreements that may have been forced upon them. In  
28 addition, Defendants knew they possessed special knowledge about pay practices and policies,

1 most notably intentionally refusing to pay for all hours actually worked, which should have been  
2 recorded in Defendants' pay records and the consequence of the alleged arbitration agreements  
3 and policies and practices on Class Members.

4 43. Class Members did not discover the fact that they were entitled to all pay under the  
5 Labor Code until shortly before the filing of this lawsuit nor was there ever any discussion about  
6 Plaintiff's and the Class' waiver of their Constitutional rights of trial by jury, right to collectively  
7 organize and oppose unlawful pay practices under California law as well as obtain injunctive relief  
8 preventing such practices from continuing. As a result, the applicable statutes of limitation were  
9 tolled until such time as Plaintiff and the Class Members discovered their claims.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY MINIMUM WAGES**

12 **(Against All Defendants)**

13 44. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
14 full herein.

15 45. Defendants failed to pay Class Members minimum wages for all hours worked.  
16 Defendants had a consistent policy of misstating Class Members' time records and failing to pay  
17 Class Members for all hours worked. Class Members would work hours and not receive wages,  
18 including as alleged above in connection with off the clock work. Defendants, and each of them,  
19 have intentionally and improperly changed, adjusted and/or modified the hours of Class Members,  
20 which resulted in off the clock work and underpayment of all wages owed to Class Members over  
21 a period of time, while benefiting Defendants. During the relevant time period, Defendants thus  
22 regularly failed to pay minimum wages to Class Members, to their detriment. Additionally,  
23 Defendants had a consistent policy of failing to pay Class Members for hours worked during  
24 alleged meal and rest periods for which Class Members were consistently denied, as also  
25 addressed herein. Defendants' uniform pattern of unlawful wage and hour practices manifested,  
26 without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy  
27 and practice that denied accurate compensation to Class Members as to minimum wage pay.

28 46. In California, employees must be paid at least the then applicable state minimum

1 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California  
2 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must  
3 timely pay its employees for all hours worked. Defendants failed to do so.

4 47. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states:  
5 “The minimum wage for employees fixed by the commission is the minimum wage to be paid to  
6 employees, and the payment of a less wage than the minimum so fixed is unlawful.”

7 48. The applicable minimum wages fixed by the commission for work during the  
8 relevant period is found in Paragraph 4(A)-4(D) of the IWC Wage Orders.

9 49. The minimum wage provisions of California Labor Code are enforceable by private  
10 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to  
11 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal  
12 overtime compensation applicable to the employee is entitled to recover in a civil action the  
13 unpaid balance of the full amount of this minimum wage or overtime compensation, including  
14 interest thereon, reasonable attorney’s fees and costs of suit.”

15 50. As described in California Labor Code §§ 1185 and 1194.2, any action for wages  
16 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,  
17 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage  
18 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for  
19 all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate may  
20 be used as a credit against a minimum wage obligation.

21 51. In committing these violations of the California Labor Code, Defendants  
22 inaccurately recorded, or required Class Members to input times that did not reflect their actual  
23 hours worked, or calculated the correct time worked and consequently underpaid the actual time  
24 worked by Class Members. Defendants acted in an illegal attempt to avoid the payment of all  
25 earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare  
26 Commission requirements and other applicable laws and regulations. As a result of these  
27 violations, Defendant also failed to timely pay all wages earned in accordance with California  
28 Labor Code § 1194.

1           52.     California Labor Code § 1194.2 also provides for the following remedies: “In any  
2 action under Section 1194 . . . to recover wages because of the payment of a wage less than the  
3 minimum wages fixed by an order of the commission, an employee shall be entitled to recover  
4 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

5           53.     In addition to restitution for all unpaid wages, pursuant to California Labor Code §  
6 1197.1, Class Members are entitled to recover a penalty of \$100.00 for the initial failure to timely  
7 pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each  
8 employee minimum wages.

9           54.     Pursuant to California Labor Code § 1194.2, Class Members are further entitled to  
10 recover liquidated damages in an amount equal to wages unlawfully unpaid and interest thereon.

11           55.     Defendants have the ability to pay minimum wages for all time worked and have  
12 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this  
13 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Class Members.

14           56.     Wherefore, Class Members are entitled to recover the unpaid minimum wages  
15 (including double minimum wages), liquidated damages in an amount equal to the minimum  
16 wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant  
17 to California Labor Code § 1194(a). Plaintiff and the other members of the Class further request  
18 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the  
19 assessment of any statutory penalties against Defendants, in a sum as provided by the California  
20 Labor Code, including § 558, and/or other applicable statutes.

21                                   **SECOND CAUSE OF ACTION**

22                   **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

23                                   **(Against All Defendants)**

24           57.     Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
25 full herein.

26           58.     California Labor Code § 1194 provides that “any employee receiving less than the  
27 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to  
28 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime

1 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action  
2 may be maintained directly against the employer in an employee's name without first filing a  
3 claim with the Division of Labor Standards and Enforcement.

4 59. By their conduct, as set forth herein, Defendants violated California Labor Code §  
5 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Class  
6 Members: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8)  
7 hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours  
8 worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for  
9 hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of  
10 eight (8) hours on any seventh day of work in a workweek.

11 60. Defendants had a consistent policy of not paying Class Members wages for all  
12 hours worked, including by requiring off the clock work, as addressed above. Defendants, and  
13 each of them, have intentionally and improperly rounded, changed, adjusted, and/or modified  
14 certain employees' hours, including Plaintiff's, in order to avoid paying Class Members all earned  
15 and owed straight time and overtime wages and other benefits, in violation of the California Labor  
16 Code, the California Code of Regulations and the IWC Wage Orders and guidelines set forth by  
17 the Division of Labor Standards and Enforcement. Defendants have also violated these provisions  
18 by requiring Class Members to work through portions of their meal period. Therefore, Class  
19 Members were not properly compensated, nor were they paid overtime rates for hours worked in  
20 excess of eight hours in a given day, and/or forty hours in a given week. Based on information and  
21 belief, Defendants did not make available to Class Members a reasonable protocol for correcting  
22 time records when Class Members worked overtime hours or to fix incorrect time entries.

23 61. Defendants' failure to pay Class Members the unpaid balance of regular wages  
24 owed and overtime compensation, as required by California law, violates the provisions of Labor  
25 Code §§ 510 and 1198, and is therefore unlawful.

26 62. Additionally, Labor Code § 558(a) provides "any employer or other person acting  
27 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any  
28 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil

1 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each  
2 pay period for which the employee was underpaid in addition to an amount sufficient to recover  
3 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each  
4 underpaid employee for each pay period for which the employee was underpaid in addition to an  
5 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall  
6 be paid to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in  
7 this section are in addition to any other civil or criminal penalty provided by law.” Defendants  
8 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC  
9 Wage Orders. Accordingly, Plaintiff and the Class Members seek the remedies set forth in Labor  
10 Code § 558.

11         63. Defendants’ failure to pay compensation in a timely fashion also constituted a  
12 violation of California Labor Code § 204, which requires that all wages shall be paid  
13 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct  
14 violation of that provision of the California Labor Code, Defendants have failed to pay all wages  
15 and overtime compensation earned by Class Members. Each such failure to make a timely  
16 payment of compensation to Class Members constitutes a separate violation of California Labor  
17 Code § 204.

18         64. Class Members have been damaged by these violations of California Labor Code  
19 §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

20         65. Consequently, pursuant to the California Labor Code, including Labor Code §§  
21 204, 510, 558, and 1194, and the applicable IWC Wage Order, paragraph 3(A) and 4(B),  
22 Defendants are liable to Class Members for the full amount of all their unpaid wages and overtime  
23 compensation, with interest, plus their reasonable attorneys’ fees and costs, as well as the  
24 assessment of any statutory penalties against Defendants, and each of them, and any additional  
25 sums as provided by the Labor Code and/or other statutes.

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1 **THIRD CAUSE OF ACTION**

2 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

3 **(Against All Defendants)**

4 66. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
5 full herein.

6 67. Class Members regularly worked shifts greater than five (5) hours and in some  
7 instances, greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not employ  
8 someone for a shift of more than five (5) hours without providing him or her with a meal period of  
9 not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or  
10 her with a second meal period of not less than thirty (30) minutes.

11 68. Defendants failed to provide Class Members with meal periods as required under  
12 the Labor Code. Defendants placed their needs over Class Members lawful meal breaks and this  
13 resulted in Class Members consistently having to work through their scheduled meal breaks  
14 because the demands of the job would not avail them the opportunity to take a lawfully  
15 uninterrupted and off-duty meal break. Furthermore, upon information and belief, on the occasions  
16 when Class Members worked more than ten (10) hours in a given shift, they did so without  
17 receiving a second uninterrupted thirty (30) minute meal period as required by law.

18 69. Defendants thus failed to provide Class Members with meal periods as required by  
19 the Labor Code, including by not providing them with the opportunity to take meal breaks, by  
20 providing them late or for less than thirty (30) minutes, or by requiring them to perform work  
21 during breaks.

22 70. Moreover, Defendants failed to compensate Class Members for each meal period  
23 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 of  
24 the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee  
25 a meal period in accordance with this section, the employer shall pay the employee one (1) hour of  
26 pay at the employee's regular rate of compensation for each workday that the meal period is not  
27 provided. Defendants failed to compensate Class Members for each meal period not provided or  
28 inadequately provided, as required under Labor Code § 226.7.

1           71.     Therefore, pursuant to Labor Code § 226.7 and the applicable IWC Wage Order,  
2 paragraph 11, Class Members are entitled to damages in an amount equal to one (1) hour of wages  
3 at their effective hourly rates of pay for each meal period not provided or deficiently provided, a  
4 sum to be proven at trial, as well as the assessment of any statutory penalties against the  
5 Defendants, and each of them, in a sum as provided by the Labor Code and other statutes.

6                                   **FOURTH CAUSE OF ACTION**

7                                   **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

8                                   **(Against All Defendants)**

9           72.     Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
10 full herein.

11           73.     Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders  
12 provide that employers must authorize and permit all employees to take rest periods at the rate of  
13 ten (10) minutes net rest time per four (4) work hours.

14           74.     Class Members consistently worked consecutive four (4) hour shifts and were  
15 generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to  
16 authorize and permit them to take rest periods. Pursuant to the Labor Code and the applicable IWC  
17 Wage Order, Class Members were entitled to paid rest breaks of not less than ten (10) minutes for  
18 each consecutive four (4) hour shift, and Defendants failed to provide Class Members with timely  
19 rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Defendants  
20 placed their needs over Class Members lawful rest breaks, and this resulted in Class Members  
21 consistently having to work through their scheduled rest breaks because the demands of the job  
22 would not avail them the opportunity to take a lawfully uninterrupted and off-duty rest break.  
23 Thus, Class Members were consistently denied of their rest breaks.

24           75.     Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders  
25 provide that if an employer fails to provide an employee rest period in accordance with this  
26 section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of  
27 compensation for each workday that the rest period is not provided.

28           76.     Defendants, and each of them, have therefore intentionally and improperly denied

rest periods to Class Members in violation of Labor Code §§ 226.7 and 512 and paragraph 12 of the applicable IWC Wage Orders.

77. Defendants failed to authorize and permit Class Members to take rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Class Members with an additional hour of pay at each Class Member's effective hourly rate for each day that Defendants failed to provide them with adequate rest breaks, as required under Labor Code § 226.7.

78. Therefore, pursuant to Labor Code § 226.7 and paragraph 12 of the applicable IWC Wage Orders, Class Members are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day worked without the required rest breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

**FIFTH CAUSE OF ACTION**  
**VIOLATION OF LABOR CODE § 226(a)**  
**(Against All Defendants)**

79. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

80. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, , , and the corresponding number of hours worked at each hourly rate; these statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

81. Defendants failed to provide Class Members with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Class Members failed to correctly include the name and address of the legal entity that is the employer. Thus, the wage statements do not comply with Labor Code § 226(a)(8). Further, the wage statements given to Class Members failed to accurately account for unpaid wages and

1 overtime because Defendants under-reported Class Members' actual hours worked due to off the  
2 clock work described above. Additionally, the wage statements given to Class Members failed to  
3 accurately account for premium pay for deficiently provided meal periods and rest breaks.

4 82. Throughout the liability period, Defendants intentionally failed to furnish to Class  
5 Members, upon each payment of wages, itemized statements accurately showing: (1) gross wages  
6 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any  
7 applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the  
8 inclusive dates of the period for which the employee is paid, (7) the name of the employee and  
9 only the last four digits of his or her social security number or an employee identification number  
10 other than a social security number, (8) the name and address of the legal entity that is the  
11 employer and (9) all applicable hourly rates in effect during the pay period and the corresponding  
12 number of hours worked at each hourly rate by the employee pursuant to Labor Code § 226,  
13 amongst other statutory requirements. Defendants knowingly and intentionally failed to provide  
14 Class Members with such timely and accurate wage and hour statements.

15 83. Class Members suffered injury as a result of Defendants' knowing and intentional  
16 failure to provide them with the accurate wage and hour statements as required by law and are  
17 presumed to have suffered injury and be entitled to penalties under Labor Code § 226(e), as the  
18 Defendants have failed to provide wage statements with accurate and complete information as  
19 required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and Class  
20 Members cannot promptly and easily determine from the wage statement alone one or more of the  
21 following: (i) The amount of the gross wages or net wages paid to the employee during the pay  
22 period or any of the other information required to be provided on the itemized wage statement  
23 pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii) Which deductions the  
24 employer made from gross wages to determine the net wages paid to the employee during the pay  
25 period, (iii) The name and address of the employer and, (iv) The name of the employee and only  
26 the last four digits of his or her social security number or an employee identification number other  
27 than a social security number. For purposes of Labor Code § 226(e) "promptly and easily  
28 determine" means a reasonable person [i.e. an objective standard] would be able to readily

ascertain the information without reference to other documents or information.

84. Therefore, as a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Class Members suffered injuries, including among other things confusion over whether they received all wages owed to them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

85. Pursuant to Labor Code §§ 226(a) and 226(e) and 1174, and the applicable IWC Wage Order, paragraph 7(B), Class Members are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

**SIXTH CAUSE OF ACTION**  
**VIOLATION OF LABOR CODE § 203**  
**(Against All Defendants)**

86. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

87. Numerous Class Members are no longer employed by Defendants; they either quit Defendants' employ or were fired therefrom.

88. Defendants failed to pay these Class Members all wages due and certain at the time of termination or within seventy-two (72) hours of resignation.

89. The wages withheld from these Class Members by Defendants remained due and owing for more than thirty (30) days from the date of separation from employment.

90. Defendants failed to pay Class Members without abatement, all wages as defined by applicable California law. Class Members were not paid all regular and overtime wages because Defendants failed to pay for all hours worked and required off the clock work. Additionally, Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the

required time was willful within the meaning of Labor Code § 203.

91. Defendants' failure to pay wages, as alleged entitles these Class Members to penalties under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

**SEVENTH CAUSE OF ACTION**  
**VIOLATION OF LABOR CODE § 204**  
**(Against All Defendants)**

92. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

93. Labor Code § 204 instructs that: "All wages, ...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month." Additionally, the requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period." As detailed above, Defendants maintained a consistently applied policy and practice of not paying all wages earned between the 1<sup>st</sup> and 15<sup>th</sup> days of a month between the 16<sup>th</sup> and 26<sup>th</sup> day and failed to pay all wages earned between the 16<sup>th</sup> and the last day of the month between the 1<sup>st</sup> and 10<sup>th</sup> day of the following month. Defendants similarly failed to pay all wages earned by not more than seven calendar days following the close of the payroll period. These failures all arose from Defendants' failure to pay for all hours worked as detailed above.

94. All wages due and owing to Plaintiff and the Class Members, including as required under Labor Code § 510, were therefore not timely paid by Defendants, as addressed in detail above. Additionally, wages required by Labor Code § 1194 and other sections became due and payable to each Class Member in each pay period that he or she was not provided with a meal

1 period or rest period or paid straight or overtime wages or commissions to which he or she was  
2 entitled.

3 95. Defendants thus violated Labor Code § 204 by systematically refusing to pay  
4 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the  
5 applicable IWC Wage Orders, employers are required “to pay each employee, on the established  
6 payday for the period involved, not less than the applicable minimum wage for all hours worked in  
7 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer  
8 hours than those fixed by the order or under conditions of labor prohibited by the order is  
9 unlawful.” Plaintiff and the Class Members may therefore pursue damages and penalties for  
10 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including  
11 penalties under paragraph 20 of the applicable IWC Wage Orders.

12 96. As a result of the unlawful acts of Defendants, Plaintiff and Class Members seek to  
13 represent they have been deprived of wages in amounts to be determined at trial, and they are  
14 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,  
15 pursuant to Labor Code § 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the  
16 applicable IWC Wage Orders.

17 **EIGHTH CAUSE OF ACTION**

18 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**  
19 **AND 1174.5**

20 **(Against All Defendants)**

21 97. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
22 full herein.

23 98. California Labor Code § 1174 requires that all employers shall keep accurate time  
24 and wage records for all employees. California Labor Code § 1174.5 further requires that any  
25 employee suffering injury due to a willful violation of the aforementioned obligations may seek  
26 damages, including civil penalties, from the employer.

27 99. During the course of Plaintiff’s and Class Members’ employment, Defendants  
28 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as

1 required by California Labor Code § 1174 by failing to pay Plaintiff and Class Members proper  
2 wages, overtime, and premium pay as discussed above.

3 100. Accordingly, Defendants are liable for civil penalties pursuant to the California  
4 Labor Code § 1174.5 for the three (3) years prior to the filing of this Complaint.

5 **NINTH CAUSE OF ACTION**

6 **REIMBURSEMENT OF NECESSARY EXPENDITURES UNDER LABOR CODE § 2802**

7 **(Against All Defendants)**

8 101. Plaintiff re-alleges and incorporates all preceding paragraphs as though set forth in  
9 full herein.

10 102. Under Labor Code § 2802(a) an employer must indemnify its employees for all  
11 necessary expenditures or losses incurred by the employee in direct consequence of the discharge  
12 of his or her duties, or of his or her obedience to the directions of the employer.

13 103. Defendants have regularly required Plaintiff to incur business expenses in the course  
14 of performing his required job duties for Defendants including for cell phone expenses. Upon  
15 information and belief, Class Members incurred similar costs. These expenses incurred by Plaintiff  
16 and Class Members were necessary and required of them in performing their assigned job duties,  
17 but Defendants failed to reimburse Plaintiff and Class Members for all such necessary expenditures.  
18 Class Members were not reimbursed for those lawful and necessary work related expenses or losses  
19 incurred in direct discharge of their job duties during their employment with Defendants and at the  
20 direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders,  
21 paragraph 9.

22 104. As a result of the unlawful acts of Defendants, Class Members have been deprived  
23 of reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,  
24 plus interest and penalties thereon, attorneys' fees, and costs.

25 **TENTH CAUSE OF ACTION**

26 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

27 **(Against All Defendants)**

28 105. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in

1 full herein.

2 106. Plaintiff, on behalf of himself, Class Members, and the general public, brings this  
3 claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as  
4 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Class  
5 Members and the general public. Plaintiff seeks to enforce important rights affecting the public  
6 interest within the meaning of Code of Civil Procedure § 1021.5.

7 107. Plaintiff is a “person” within the meaning of Business & Professions Code  
8 § 17204, has suffered an injury, and therefore has standing to bring this cause of action for  
9 injunctive relief, restitution, and other appropriate equitable relief.

10 108. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair  
11 business practices. By the conduct alleged herein, Defendants’ practices were deceptive and  
12 fraudulent in that Defendants’ policy and practice failed to provide the required amount of  
13 compensation for missed meal and rest breaks, and failed to adequately compensate Class  
14 Members for all hours worked, due to systematic business practices as alleged herein that cannot  
15 be justified, pursuant to the applicable California Labor Code and Industrial Welfare Commission  
16 requirements in violation of California Business and Professions Code §§ 17200, *et seq.*, and for  
17 which this Court should issue injunctive and equitable relief, pursuant to California Business &  
18 Professions Code § 17203, including restitution of wages wrongfully withheld.

19 109. Wage-and-hour laws express fundamental public policies. Paying employees their  
20 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental  
21 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State  
22 vigorously to enforce minimum labor standards, to ensure that employees are not required or  
23 permitted to work under substandard and unlawful conditions, and to protect law-abiding  
24 employers and their employees from competitors who lower costs to themselves by failing to  
25 comply with minimum labor standards.

26 110. Defendants have violated statutes and public policies. Through the conduct alleged  
27 in this Complaint Defendants have acted contrary to these public policies, have violated specific  
28 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in

1 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,  
2 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges  
3 guaranteed to all employees under the law.

4 111. Defendants' conduct, as alleged above, constitutes unfair competition in violation  
5 of the Business & Professions Code § 17200 *et seq.*

6 112. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and  
7 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of  
8 reasonable care should have known that their conduct was unlawful; therefore their conduct  
9 violates the Business & Professions Code § 17200 *et seq.*

10 113. By the conduct alleged herein, Defendants have engaged and continue to engage in  
11 a business practice which violates California and federal law, including but not limited to, the  
12 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor  
13 Code including Sections 203, 204, 226, 226.7, 512, 1194, 1197, and 1198, for which this Court  
14 should issue declaratory and other equitable relief pursuant to California Business & Professions  
15 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair  
16 competition, including restitution of wages wrongfully withheld.

17 114. As a proximate result of the above-mentioned acts of Defendants, Class Members  
18 have been damaged, in a sum to be proven at trial.

19 115. Unless restrained by this Court, Defendants will continue to engage in such  
20 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court  
21 should make such orders or judgments, including the appointment of a receiver, as may be  
22 necessary to prevent the use by Defendants or their agents or employees of any unlawful or  
23 deceptive practice prohibited by the Business & Professions Code, including but not limited to the  
24 disgorgement of such profits as may be necessary to restore Class Members to the money  
25 Defendants have unlawfully failed to pay.

26 **ELEVENTH CAUSE OF ACTION**  
27 **VIOLATION OF LABOR CODE § 2698, ET SEQ.**  
28 **(Against All Defendants)**

1           116. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in  
2 full herein.

3           117. Plaintiff and the Employees in the Class are also Class Members as defined under  
4 Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and either were  
5 or are employed by the alleged violators, Defendants, during the relevant time period (“Class  
6 Members”).

7           118. In failing to pay Class Members minimum wages and overtime, not providing  
8 proper meal and rest periods, failing to provide accurate wage statements, and failing to pay  
9 Employees upon termination or timely upon resignation, all discussed above, Defendants failed to  
10 timely pay Class Members wages on a semimonthly basis as required under Labor Code § 204.  
11 Defendants also failed to maintain records showing accurate hours worked and the wages paid to  
12 Class Members, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage  
13 Orders.

14           119. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699  
15 for Defendants’ violation of Labor Code provisions included under Labor Code 2699.5, including  
16 the penalty provisions, without limitation, based, inter alia, on the following California Labor  
17 Code sections: 201, 202, 203, 204, 210, 221, 226, 226.3, 226.7, 227.3, 510, 512, 551, 552, 558,  
18 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2802, 2926, *et seq.*

19           120. More specifically, after complying with the notice procedures of Labor Code §  
20 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General  
21 and other similarly Class Members, a PAGA claim for violations of the above addressed  
22 underlying claims and seeking penalties as specified by the applicable corresponding provisions,  
23 including as follows:

24           (a) Wage Claims: For failure to provide Plaintiff and the Class Members all earned  
25 regular pay and minimum wages for regular hours worked and for failure to pay overtime  
26 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and  
27 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking  
28 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,

1 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant  
2 to Labor Code § 2699(g)(1);

3 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Class  
4 Members off-duty, timely, and unpaid meal periods and failure to authorize and permit them to  
5 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under  
6 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC  
7 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under  
8 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,  
9 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs  
10 pursuant to Labor Code § 2699(g)(1);

11 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to  
12 provide Plaintiff and Class Members with accurate, itemized wage statements and failure to  
13 maintain employment records for Plaintiff and Class Members under Labor Code §§ 226, 1174,  
14 and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all  
15 civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),  
16 226.3, 558, 1174.5, 1199, 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and  
17 also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by  
18 providing inaccurate wage statements and failing to maintain records as required under Labor  
19 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor  
20 Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a  
21 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial  
22 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent  
23 citation, ...";

24 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at  
25 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 202, 203, 204,  
26 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor  
27 Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the  
28 applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code §

1 2699(g)(1);

2 (e) All Alleged Violations of the IWC Wage Orders and Other Labor Code

3 Sections: For any above addressed violation of the applicable provisions of the IWC Wage  
4 Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code §  
5 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and  
6 paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to  
7 Labor Code § 2699(g)(1).

8 121. As also addressed above, Plaintiff, on behalf of the Class Members, also seeks the  
9 penalties and remedies set forth in Labor Code § 558, which states:

10 (a) Any employer or other person acting on behalf of an employer who violates, or  
11 causes to be violated, a section of this chapter or any provision regulating hours and days of work  
12 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:  
13 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period  
14 for which the employee was underpaid in addition to an amount sufficient to recover underpaid  
15 wages. (2) For any subsequent violation, one hundred dollars (\$100) for each underpaid employee  
16 for each pay period for which the employee was underpaid in addition to an amount sufficient to  
17 recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected  
18 employee.

19 (b) If upon inspection or investigation the Labor Commissioner determines that a  
20 person had paid or caused to be paid a wage for overtime work in violation of any provision of this  
21 chapter, or any provision regulation hours and days of work in any order of the Industrial Welfare  
22 Commission, the Labor Commissioner may issue a citation. The procedures for issuing,  
23 contesting, and enforcing judgments for citations or civil penalties issued by the Labor  
24 Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1.

25 (c) The penalties provided for in this section are in addition to any other civil or  
26 criminal penalty provided by law.

27 122. Plaintiff has exhausted his administrative remedies by sending a certified letter to  
28 the LWDA and Defendants postmarked on **December 16, 2024**, addressing in detail the specific

provisions of the Labor Code Defendants have violated and addressing the facts and legal theories to support the alleged violations and requested penalties. The LWDA has not provided notice of its intent to investigate the alleged violations within 65 calendar days of the postmark date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations addressed herein and in the PAGA Notice Letter and the original Complaint.

**RELIEF REQUESTED**

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Class Members and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Class Members for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
6. For compensatory damages in the amount of the hourly wage made by Class Members for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
7. For penalties pursuant to Labor Code § 226(e) for Class Members, as may be proven;
8. For penalties pursuant to Labor Code § 203 for all Class Members who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
9. For restitution and/or damages for all amounts unlawfully withheld from the wages

1 for all class members in violation of Labor Code § 204, as may be proven;

2 10. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;

3 11. For restitution and/or damages for all amounts unlawfully withheld from the wages  
4 for all Class Members in violation of Labor Code § 2802, as may be proven;

5 12. For restitution for unfair competition pursuant to Business & Professions Code  
6 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

7 13. For an order enjoining Defendants and their agents, servants, and employees, and  
8 all persons acting under, in concert with, or for them, from acting in derogation of any rights or  
9 duties adumbrated in this Complaint;

10 14. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

11 15. For other wages and penalties under the Labor Code as may be proven;

12 16. For all general, special, and incidental damages as may be proven;

13 17. For an award of pre-judgment and post-judgment interest;

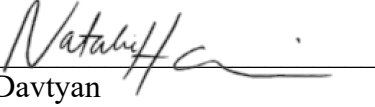
14 18. For an award providing for the payment of the costs of this suit;

15 19. For an award of attorneys' fees; and

16 20. For such other and further relief as this Court may deem proper and just.

17  
18 DATED: February 19, 2025

D.LAW, INC.

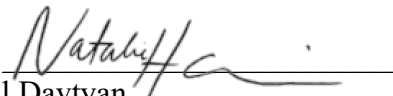
19  
20 By:   
21 Emil Davtyan  
22 David Yeremian  
23 Natalie Haritonian  
24 Andrea A. Amaya Silva  
25 Attorneys for Plaintiff MARCOS GALVAN,  
26 and all others similarly situated  
27  
28

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

DATED: February 19, 2025

D.LAW, INC.

By:   
Emil Davtyan  
David Yeremian  
Natalie Haritounian  
Andrea A. Amaya Silva  
Attorneys for Plaintiff MARCOS GALVAN,  
and all others similarly situated

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 450 N Brand Blvd., Suite 840 Glendale, CA 91203.

# FIRST AMENDED CLASS ACTION COMPLAINT

**Cheryl D. Orr**  
[cheryl.orr@faegredrinker.com](mailto:cheryl.orr@faegredrinker.com)

Marden, Kristin  
kristin.marden@faegredrinker.com  
Omar, Caroline G.  
[caroline.omar@faegredrinker.com](mailto:caroline.omar@faegredrinker.com)

☒ **(BY MAIL)** I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am “readily familiar” with this firm’s practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

**[X] (STATE)** I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
Silvia Pimentel